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of a trust *ex maleficio* do not fall within Section 60 of the Bankruptcy Act. *Lowell v. Brown*, 280 Fed. 193 (D. Mass.).

Where one has been induced by fraud to sell the bankrupt goods, the defrauded party may recover the goods or the proceeds if he can follow them even though bankruptcy is about to take place. *Donaldson v. Farwell*, 93 U. S. 631; *Gillespie v. J. C. Piles & Co.*, 178 Fed. 886 (8th Circ.). Indeed, where the *res* can be traced the defrauded party need not accept his own goods or their proceeds, but can accept other goods in lieu of them. *Illinois Parlor Frame Co. v. Goldman*, 257 Fed. 300 (7th Circ.). In the principal case the court shows there is no preference because the trust *res* is in existence. In such a case it seems clear Section 60 of the Bankruptcy Act does not apply if the *cestuis* insist on their rights. In the latter part of its opinion the court, however, goes further and says that even if the funds cannot be traced there is no preference, for Section 60 of the Bankruptcy Act cannot apply to persons seeking to share in the general assets of the bankrupt if such persons were once *cestuis* of a trust *ex maleficio*. The statements of the court are not clear on this point; but if such is the holding it seems wrong. Where the trust *res* is exhausted, the *cestuis* are classed with general creditors and share with them. *In re Mulligan*, 116 Fed. 715 (D. Mass.). Payment by the bankrupt to them within the four months period might very well be a preference if the other essentials are also present. *Clark v. Rogers*, 228 U. S. 534; *In re Dorr*, 196 Fed. 292, 298 (9th Circ.).

**BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — CONDITIONAL SALE VALID WHERE POSSESSION IS IN THIRD PARTY.** — The claimant sold cars to the bankrupt under a contract of conditional sale which provided that the bankrupt should lease the cars to a third party and assign the lease to the vendor. This was done. Each car bore plates giving the vendor's name as owner. On the purchaser's becoming bankrupt, the vendor seized the cars which were in possession of the lessee outside the jurisdiction and the trustee in bankruptcy obtained an order restraining sale. *Held*, that the order be vacated. *Black v. Financing Corporation*, 279 Fed. 732 (3rd Circ.).

A trustee in bankruptcy takes the status of a judgment creditor as of the time when the petition in bankruptcy is filed, and the rights of creditors are to be determined according to local law. See U. S. COMP. STAT. § 9631. *Bailey v. Baker etc. Co.*, 239 U. S. 268; *Bryant v. Swofford etc. Co.*, 214 U. S. 279. The great weight of authority supports the title of a vendor in a conditional sale as against the buyer's creditors. *Flint Wagon Works v. Maloney*, 26 Del. 137, 81 Atl. 502. *Cf. Harkness v. Russell*, 118 U. S. 663. See WILLISTON, SALES, § 326. However the settled law of Pennsylvania is opposed to that doctrine. *Ott v. Sweatman*, 166 Pa. St. 217, 31 Atl. 102; *Printing Press Co. v. Publishing Co.*, 213 Pa. St. 207, 62 Atl. 841. The facts of this case present a situation on which the courts of Pennsylvania have not yet passed and which may well be an exception to the rigid rule that conditional sales are void as against judgment creditors. Where possession is in a third party who holds as lessee, where the vendor holds an assignment of the lease, and where the actual ownership is plainly evidenced on the *res*, all causes of deception are removed and with them the only possible justification for the Pennsylvania doctrine. The decision therefore seems correct on principle and reconcilable with Pennsylvania authority.

**CONFLICT OF LAWS — ADOPTION — DESCENT OF LAND TO CHILD LEGITIMATED BY ADOPTION.** — X, the illegitimate son of F and M, both

domiciled in California, was adopted by F pursuant to a provision of the California Civil Code. (CAL. CIV. CODE. § 230). X is now made defendant to a bill for the partition of lands in Illinois. The complainants, sisters of F, allege their heirship to F's lands. *Held*, that X succeeds to F's lands as the adopted son of F. *McNamara v. McNamara*, 135 N. E. 410 (Ill.)

For a discussion of the principles involved, see NOTES, *supra*, p. 83.

CONSTITUTIONAL LAW — TRIAL BY JURY — TERRITORIES OF THE UNITED STATES: PORTO RICO. — The plaintiff in error was convicted in the courts of Porto Rico for criminal libel. Under the law of Porto Rico this offence is a misdemeanor and a defendant prosecuted for a misdemeanor is not entitled to a trial by jury. (PORTO RICO, CODE. CR. PRO., § 178; 1904 PORTO RICO LAWS, 130.) The plaintiff in error then sued out a writ of error from the United States Supreme Court alleging a violation of the Sixth Amendment. *Held*, that the judgment be affirmed. *Balzac v. Porto Rico*, 42 Sup. Ct. Rep. 343.

The Constitution of its own force applies to "incorporated" territories. *Rasmussen v. United States*, 197 U. S. 516. It does not apply to "unincorporated" territories. *Downes v. Bidwell*, 182 U. S. 244; *Hawaii v. Mankichi*, 190 U. S. 197. What will work an incorporation of a territory is by no means clear. At any rate the Supreme Court was clear that by the treaty with Spain Porto Rico was not "incorporated." *Downes v. Bidwell*, *supra*. The question the principal case presented was whether the Organic Act of 1917 allowing Porto Ricans to become citizens of the United States had worked such a change that trial by jury was now guaranteed to Porto Ricans. See 39 STAT. AT L. 951. Congress can of course give the provisions of the Constitution the effect of a statute in territories to which the Constitution does not extend *ex proprio vigore*. See C. C. Langdell, "The Status of Our New Territories," 12 HARV. L. REV. 365, 387 n. But this was not done. See 39 STAT. AT L. 951. Arguably the Organic Act so tied Porto Rico to the United States that it became "incorporated." Cf. *Rasmussen v. United States*, *supra*. But as the law now stands, on the authority of the instant case, only a clear expression of legislative intent will induce the Supreme Court to recognize the "incorporation" of non-continental territories.

CONSTRUCTIVE TRUST — CONVEYANCE *INTER VIVOS* — EFFECT OF CONFIDENTIAL RELATIONSHIP ON BURDEN OF PROOF. — A, old and feeble, lived with a younger woman, B, on intimate terms. A conveyed her property to B under an unstated "arrangement." A died. C, A's daughter and residuary devisee, demanded a conveyance by B to C. B admitted the relationship between herself and A and did not allege consideration for the conveyance, nor did she explain the arrangement under which she acquired the property. The lower court decreed that there was no "implied" trust. *Held*, that the decree be reversed. *Berthelot v. Isaacson*, 278 Fed. 921 (5th Circ.).

Proof of no more than relationship of intimacy and confidence between a donor and a donee is no ground for imposing a constructive trust even though the donor be an old and feeble person. See PERRY, TRUSTS, 4 ed. § 210. If, however, undue influence is superadded, equity will step in to prevent the donee's unjust enrichment. *Cannon v. Gilmer*, 135 Ala. 302, 33 So. 659. See PERRY, *op. cit.* § 210. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 420. Some courts in applying this rule have held that once the existence of a confidential relationship is proved, the burden of showing complete fairness is thrown on the donee.